

ADMINISTRATIVE BOARD PROCEDURES

1. SHOW CAUSE AUTHORITY

a. Purpose

(1) The purpose of the Show Cause Authority is to review and evaluate the record of any commissioned officer (other than a commissioned warrant officer, retired officer, or temporary LDO) to determine whether the officer should be required because of substandard performance of duty, misconduct, professional or moral dereliction, or because retention is not clearly consistent with the interests of national security, to show cause for retention on active duty.

(2) The Show Cause Authority shall review and evaluate the records of officers referred under paragraph 2 of enclosure (4) or referred by the Secretary. In cases where processing is directed by the Secretary under paragraph 6c of enclosure (7), the Show Cause Authority shall direct that a BOI be convened.

b. Decision and Findings of the Show Cause Authority. The Show Cause Authority shall review and evaluate the record of the officer concerned and:

(1) Evaluate all information presented about the case under consideration.

(2) Determine whether the record contains sufficient information as to one or more of the reasons specified in this instruction to require the officer to show cause for retention before a BOI.

(a) Cases supported by a preponderance of the evidence that involve unlawful drug involvement or homosexual conduct shall be referred to a BOI.

(b) No recommended characterization of service shall be made except when appropriate under paragraph 1b(4) of this enclosure.

(3) Close the case if the authority determines that the record does not contain sufficient information to require the officer concerned to show cause for retention or to warrant referral to a BOI.

(4) Determine whether, in the case of a probationary commissioned officer, the record supports separation but the circumstances warrant characterization of honorable or general per enclosure (5) (Guidelines on Characterization of Service).

c. Action After Show Cause Authority Findings

(1) If the Show Cause Authority closes the case, all proceedings shall cease.

(2) If the Show Cause Authority determines that referral of the case to a BOI is appropriate, the Show Cause Authority shall convene, or direct to be convened, a BOI under this enclosure. A statement of the reason for making such a determination shall be provided to the officer in writing.

(3) If the Show Cause Authority recommends that a probationary commissioned officer be separated with an Honorable or General (Under Honorable Conditions) discharge, the Show Cause Authority shall initiate or direct the initiation of the notification procedure outlined in enclosure (7).

2. BOI

a. Purpose. The purpose of a BOI is to give an officer a full and impartial hearing at which he or she may respond to and rebut the allegations which form the basis for separation for cause and/or retirement in the current grade or a lesser grade and present matters favorable to his or her case on the issues of separation and/or characterization of service.

b. Convening Authority. The Show Cause Authority shall convene, or direct to be convened, a BOI upon determination that an officer should be required to show cause for retention. A BOI shall also be convened by such authority when required under the provisions of enclosures (3), (4), or (6).

c. Active Duty Orders and Expenses. In no case shall the affording of a hearing to an officer, who is not otherwise on active duty at that time, place the officer on, or return the officer to, active duty. There is no authority for the issuance of any form of initial orders to active duty for the sole purpose of facilitating appearance by an officer for a hearing. There is no authority for the payment or reimbursement of any expenses which may be incurred by an officer, or by any person in his or

her behalf, in connection with any administrative separation proceeding under these regulations.

d. Membership, Recorder, Legal Advisor. BOIs shall consist of not less than three officers in the same Armed Force as the respondent.

(1) In the case of Regular commissioned officers other than temporary LDOs and warrant officers, members shall be highly qualified and experienced officers in the grade of O-5 or above, except that at least one member shall be in the grade of O-6 or above. Each member shall be senior in grade to any officer to be considered by the board. They shall be Regular officers on the active duty list.

(2) In the case of Reserve commissioned officers other than warrant officers, members shall be highly qualified and experienced officers serving on active duty or in an active status in the grade of O-5 or above, except that at least one member shall be in the grade of O-6 or above. Each member shall be senior in grade to any officer to be considered by the board. At least one member must be a Reserve officer.

(3) A BOI must have at least one member from the same competitive category as the respondent. This is especially important when considering an officer for substandard performance. However, in cases involving small competitive categories, isolated geographic locations, or for reasons of operational necessity, competitive category membership may be waived by the convening authority if no suitable officer is reasonably available.

(4) In the case of temporary limited duty and warrant officers, the members comprising the board shall be senior to the respondent unless otherwise directed by the Secretary.

(5) At least one member shall be an unrestricted line officer. Such officers should have command experience, whenever possible.

(6) The convening authority is not limited to officers under his or her direct command in selecting qualified officers to sit on a BOI.

(7) When a sufficient number of highly qualified and experienced active duty officers are not available, the convening authority shall complete Board membership with available retired

13 DEC 1999

officers who meet the criteria of paragraph 2d(1) and (2) other than the active duty or active status list requirement, and who have been retired for fewer than 2 years.

(8) Officers with personal knowledge pertaining to the particular case shall not be appointed to the Board considering the case. No officer may be a member of more than one board convened under this instruction to consider the same officer.

(9) The senior member shall be the presiding officer, and rule on all matters of procedure and evidence, but may be overruled by a majority of the Board. Board members are subject to challenge for cause only. If appointed, the legal advisor shall rule finally on all matters of procedure, evidence and challenges except challenges to himself or herself. The convening authority will rule finally on all challenges for cause to the legal advisor.

(10) The convening authority shall appoint a nonvoting Recorder to perform such duties as appropriate. The recorder shall not participate in closed sessions of the Board.

(11) The convening authority may appoint a nonvoting legal advisor to perform such duties as the Board desires. The legal advisor shall not participate in closed sessions of the Board.

e. Notice to Respondent. The respondent shall be notified in writing at least 30 days before the hearing of his or her case before a BOI, of each of the reasons for which he or she is being required to show cause for retention in the Naval Service, the least favorable characterization of service which may be recommended by the Board, and of the rights of a respondent. When the Board is required in the case of a retirement-eligible officer, to consider whether to recommend that the respondent be retired in the current grade or a lesser grade, the respondent shall be informed of all reasons therefor, and the right to present evidence that his or her service, in the grade currently held, has been satisfactory.

f. Rights of a Respondent. The respondent shall be given the following rights, which may be exercised or waived:

(1) Reasonable additional time, as determined necessary by the Board or the Convening Authority, to prepare his or her case. In addition to the 30 days provided in paragraph 2e, the

13 DEC 1999

respondent may, for good cause, further petition the convening authority, in a timely manner, for a continuance. Requests for continuance will be decided by the convening authority if made prior to the convening of the BOI. Once convened, the senior member may rule on such requests or refer them to the convening authority for decision.

(2) The right to counsel, as provided in paragraph 2g.

(3) The opportunity to present matters in his or her own behalf. If suspected of an offense, the officer should be warned against self-incrimination under article 31, UCMJ, before testifying as a witness. Failure to warn the officer shall not preclude consideration of the testimony of the officer by the BOI.

(4) Full access to, and copies of, records relevant to the case, except that information or material shall be withheld if the CHNAVPERS or DC/S (M&RA) determines that such information should be withheld in the interest of national security. When information or material is so withheld, a summary of the information or material will be provided to the extent that the interests of national security permit.

(5) The names of all witnesses in advance of BOI proceedings. Failure to provide any information or the name of a witness shall not preclude the board from considering the information or hearing the witness, provided the respondent has had the opportunity to examine any statement, or talk with any witness presented, prior to consideration by the Board.

(6) The right to challenge any member for cause. The respondent may submit to the convening authority for appropriate action, any relevant matter which, in his or her view, indicates that a particular member or members should not consider the case. A member shall be excused if found by the convening authority or the legal advisor to be unable to render a fair and impartial decision in the respondent's case. If such an excusal results in the membership of the Board falling below the number required in paragraph 2d of this enclosure, the convening authority shall appoint a new member who is qualified per that paragraph. Such new member may be challenged in the same manner as the member who was previously appointed and excused.

13 DEC 1999

(7) The right to request from the Convening Authority or the BOI the appearance before the Board of any witness whose testimony is considered to be pertinent to the case, as provided in paragraph 2i.

(8) The right to submit, at any time before the board convenes or during the proceedings, any matter from the respondent's service record, letters, answers, depositions, sworn or unsworn statements, affidavits, certificates, or stipulations. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(9) The respondent and counsel may question any witness who appears before the BOI. Testimony of witnesses shall be under oath or affirmation.

(10) The right to give sworn or unsworn testimony. The respondent may only be examined on sworn testimony. The respondent should be warned against self-incrimination as required by article 31, UCMJ. Failure to so warn the respondent shall not preclude consideration of the testimony by the BOI.

(11) The respondent or counsel may present oral or written argument, or both, on the matter to the Board.

(12) The respondent shall be provided with a copy of the record of the proceedings in the case and a copy of the findings and recommendations of the Board. In cases involving classified matter withheld in the interests of national security, any record or information to be provided the respondent will be edited prior to delivery to him or her to remove classified material and preserve its integrity.

(13) The respondent may submit a statement in rebuttal to the findings and recommendations of the BOI for consideration by CHNAVPERS and SECNAV.

(14) The respondent may appear in person, with or without counsel, at all open proceedings of the Board.

(15) Failure of the respondent to invoke any of these rights shall not be considered as a bar to the BOI proceedings, findings, or recommendations.

13 DEC 1999

g. Counsel

(1) Respondent is entitled to have appointed as counsel by the convening authority, a lawyer certified per article 27(b), UCMJ.

(2) Respondent may request military counsel of his or her choice provided the requested counsel is reasonably available.

(3) The determination as to whether individual counsel is reasonably available shall be made per the procedures set forth in section 0131 of JAGINST 5800.7C, "Manual of the Judge Advocate General" for determining the availability of Individual Military Counsel for courts-martial. Upon receipt of notice of the availability of the individual counsel, the respondent must elect between representation by appointed counsel and representation by individual counsel. A respondent may be represented in these proceedings by both appointed counsel and individual counsel only if the Convening Authority, in his or her sole discretion, approves a written request from the respondent for representation by both counsel; such written request must set forth in detail why representation by both counsel is essential to insure a fair hearing.

(4) Respondent may also engage civilian counsel at no expense to the government, in addition to, or in lieu of, military counsel.

h. Waiver. Respondent may waive any of the aforementioned rights before the BOI convenes or during the proceedings. Failure to appear, without good cause, at a hearing constitutes waiver of the right to be present at the hearing. Failure to respond after being afforded a reasonable opportunity to consult with counsel constitutes a waiver of the rights in paragraph 2f of this enclosure.

i. Witnesses

(1) Witnesses whose testimony will add materially to the case shall be invited to appear to offer testimony before the Board if such witnesses are reasonably available.

(2) Witnesses not within the immediate geographical area of the Board are considered not reasonably available, except as provided for in subparagraph (4).

13 DEC 1980

(3) Statements or depositions shall be admitted and considered by BOI from witnesses not reasonably available to testify during a board proceeding.

(4) The convening authority shall request that a commanding officer make available, for personal appearance before a BOI, active duty or civilian witnesses under his or her jurisdiction whose personal appearance is essential to a fair determination, unless they:

(a) Are unavailable within the meaning of Military Rule of Evidence (M.R.E.) 804(a), or;

(b) Decline an invitation to testify before a Board. Civilian employees may be directed to appear by their supervisors. Military personnel can be ordered to appear by their commanding officer.

(5) Respondent will specify in his or her request for witnesses to the convening authority or, once proceedings have commenced, the BOI, the type of information the witness is expected to provide. Such a request shall contain the following matter:

(a) A synopsis of the testimony that the witness is expected to give.

(b) An explanation of the relevance of such testimony to the issues of separation or characterization.

(c) An explanation as to why written or recorded testimony would not be sufficient to provide for a fair determination.

(6) Requests for witnesses may be denied if not requested in a timely manner.

(7) Witnesses not on active duty must appear voluntarily and at no expense to the government, except as provided for by subparagraph (9).

(8) The convening authority shall make all final decisions on the appearance of witnesses.



(9) If the convening authority determines that the personal appearance of a witness is necessary, he or she will authorize expenditure of funds for production of the witness only if the presiding officer (after consultation with a judge advocate) or the legal advisor (if appointed) advises that:

(a) The testimony of a witness is not cumulative;

(b) The personal appearance of the witness is essential to a fair determination on the issues of separation or characterization;

(c) Written or recorded testimony will not accomplish adequately the same objective;

(d) The need for live testimony is substantial, material, and necessary for a proper disposition of the case; and the significance of the personal appearance of the witness, when balanced against the practical difficulties in producing the witness, favors production of the witness. Factors to be considered in relation to the balancing test include, but are not limited to, the cost of producing the witness, the timing of the request for production of the witness, the potential delay in the proceeding that may be caused by producing the witness, or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

(10) If it is determined that the personal testimony of a witness is required, the hearing will be postponed or continued, if necessary, to permit the attendance of the witness.

(11) The hearing shall be postponed or continued to provide the respondent with a reasonable opportunity to obtain a written statement from the witness if a witness requested by the respondent is unavailable in the following circumstances:

(a) When the presiding officer determines that the personal testimony of the witness is not required;

(b) When the commanding officer of a military witness determines that military necessity precludes the witness' attendance at the hearing; or

(c) When a civilian witness declines to attend the hearing.

13 DEC 1999

j. Hearing. Hearings by BOIs must be conducted in a fair and impartial manner to ensure that the respondent has the opportunity to present his or her case. At the discretion of the convening authority, a BOI may be convened to hear the cases of multiple respondents.

(1) BOIs are not courts-martial and the rules of evidence do not apply.

(2) Oral or written matter not admissible in a court of law may be accepted by BOIs.

(3) Oral or written matter presented may be subject to reasonable restrictions as to authenticity, relevance, materiality, and competency as determined by the BOI.

(4) Except for closed sessions during which the board will deliberate on the evidence presented, the proceedings of the board should normally be open to the public at the discretion of the convening authority. Once convened, the senior member may close the proceedings upon motion by either side upon good cause shown.

k. Decision of BOI. The board will make the following determination, by majority vote, based on the evidence presented at the hearing.

(1) A finding on each of the reasons for separation specified (note: where a reason for separation is based on an approved finding of guilty by a court-martial or a civilian criminal conviction, such a finding of guilty or criminal conviction shall be binding on the BOI; however, in all other cases, a finding on a reason for separation shall be based on a preponderance of the evidence), and

(2) One of the following:

(a) That the respondent is recommended for separation from the Naval Service for the specific reason or reasons provided in paragraph 1 (Separation for Cause) or paragraph 6 (Parenthood) of enclosure (3) supported by a preponderance of the evidence. Based on those reasons, the evidence presented, the overall record of service, and consistent with enclosure (5), the Board must recommend a characterization of service.

13 DEC 1999

(b) That none of the reasons specified are supported by sufficient evidence presented to warrant separation for cause and the case is, therefore, closed.

(3) The Board shall recommend separation by reason of unlawful drug involvement if it finds that a preponderance of the evidence supports that finding under subparagraph 1b(2) of enclosure (3).

(4) The Board shall recommend separation for misconduct by reason of homosexual conduct if it finds that one or more of the circumstances requiring separation under subparagraph 1c of enclosure (3) is supported by a preponderance of the evidence.

(5) In the case of a retirement-eligible officer, if separation is recommended, the Board shall recommend whether the officer should be retired in the current grade or a lesser grade. The Board must recommend the grade in which the officer last served satisfactorily for a period of not less than 6 months.

1. Record of Proceedings. The Convening Authority shall make a separate record of proceedings for each respondent.

(1) It shall include: (1) a transcript of the BOI's proceedings, including the evidence of record, and (2) a report of the findings and recommendations of the Board. In all cases, the transcript shall be in summary form unless a verbatim transcript is directed by the convening authority, CHNAVPERS or DC/S (M&RA).

(2) In addition, it shall include:

(a) The individual officer's service and background.

(b) Each of the specific reasons from enclosure (3) for which the officer is required to show cause for retention.

(c) Each of the acts, omissions, or traits alleged.

(d) The position taken by the respondent with respect to the allegations, reports, or other circumstances in question and the acts, omissions, or traits alleged.

(e) The findings on each of the reasons for separation specified.

13 DEC 1998

(f) The recommendations of the Board that the respondent be separated and receive a specific characterization of service, or, if retirement-eligible, that the officer be retired in the current grade or in a lesser grade per subparagraph 2k(5), or the finding of the Board that separation for cause is not warranted and that the case is closed.

(g) A copy of all documents and correspondence relating to the convening of the Board, e.g., witness requests.

(3) The BOI transcript shall be authenticated by the signature of the senior member of the board only. The report of the findings and recommendations shall be signed by all members of the board and by the counsel for respondent (or by the respondent himself or herself if counsel was not elected) immediately upon completion of the BOI.

(4) Any nonconcurring member(s) shall sign the report and submit separate minority report(s) which will include the extent of nonconcurrence with the Board report as to each finding and recommendation and the reasons therefor.

(5) The counsel for respondent (or respondent if no counsel was elected) shall be provided a copy of the record of proceedings and shall be provided an opportunity to submit written comments to CHNAVPERS or DC/S (M&RA) within 10 days of service. Such comments will be submitted via the respondent's chain of command, however, the respondent may submit a copy directly to CHNAVPERS or DC/S (M&RA). A certificate of service should be included with the record of proceedings verifying submission to respondent's counsel or respondent.

m. Action on the Record of Proceedings of the BOI. The record of proceedings shall be submitted via the convening authority to CHNAVPERS or DC/S (M&RA), as appropriate, for termination of proceedings or review and endorsement prior to forwarding to the Secretary for final determination. This submission shall include any minority report and rebuttal or statement of the respondent. The record of proceedings of a BOI convened solely to determine the grade in which a retirement-eligible officer should be retired shall be forwarded directly to CHNAVPERS or DC/S (M&RA) for a forwarding endorsement to the Secretary, who will make the final determination of the grade in which an officer shall be retired. If a retirement-eligible officer who has not submitted a voluntary retirement request has

13 DEC 1999

failed to show cause for retention, the BOI shall make a recommendation concerning retirement grade as set forth in subparagraph 2k(5).

n. Action on the Report of the BOI

(1) The report of a BOI that recommends separation shall be delivered to the Secretary, with any desired recommendations of the CHNAVPERS or DC/S (M&RA), for final determination.

(2) If the BOI closes the case, all proceedings will be terminated.

(3) If the BOI recommends separation or retirement, SECNAV may:

(a) Direct retention;

(b) Direct separation of the respondent for the specified reasons, and a characterization of service not less favorable than that recommended by the BOI; or

(c) Direct retirement of the respondent in the highest grade satisfactorily held as determined by the Secretary.